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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ ***Criminal Appeal No.205 of 2007***

% Date of Decision: 24th April, 2007

\# **JAMEEL AHMED & ANR.** ..... **Appellants**
! Through: None.

versus

$ **STATE (NCT OF DELHI)** ..... **Respondent**
^ Through: Ms. Richa Kapoor, APP for the State.

**CORAM:**

* **HON'BLE MR. JUSTICE R.S. SODHI**
**HON'BLE MR. JUSTICE H.R. MALHOTRA**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the digest?

***J U D G M E N T***

***R.S. SODHI, J. (ORAL)***

**1.** Criminal Appeal No.205 of 2007 stands allowed. For detailed order, see Death Sentence Reference No.2 of 2006.

**[R.S. SODHI]**
**JUDGE**

**[H.R. MALHOTRA]**
**JUDGE**

**APRIL 24, 2007**
**'AA'**

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ ***Death Sentence Reference No.2 of 2006***

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\# **STATE** ..... **Appellant**
! Through: Ms. Richa Kapoor, APP for the State.

versus

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**HON'BLE MR. JUSTICE H.R. MALHOTRA**

1. Whether Reporters of local papers may be allowed to see the judgment? yes
2. To be referred to the Reporter or not? yes
3. Whether the judgment should be reported in the digest? yes

## JUDGMENT

**R.S. SODHI, J. (ORAL)**

**1.** Death Sentence Reference No.2 of 2006 and Criminal Appeal No.205 of 2007 arise out of the judgment of the Additional Sessions Judge, Delhi in Sessions Case No.103 of 2002 arising out of F.I.R. No.79 of 2001, registered at Police Station Railway Main Delhi, whereby learned judge vide his judgment and order dated 19.05.2006 has held the appellants guilty for an offence under Section 302/34 IPC. Further by his order dated 25.05.2006, awarded death sentence to Dr. Jameel Ahmed and Dilshad for an offence under Section 302/34 IPC. He, however, acquitted the appellants under Sections 120-B/201/34 IPC. The judge also acquitted Fazludeen and Ahsan of all charges framed against them.

**2.** Brief facts of the case as have been narrated by the learned Additional Sessions Judge are as under :-

> "..... on 2.3.2001, DD No.3A was got recorded through Railway Memo produced by Sh. Ram Asrey (Daily Defficeinty Register) SSE, Office Delhi Main that in 362/4 S.S.D on W/Line No.21 in coach No.11278A N.G.R.S. G.Z.B/end three gunny bags fully packed are lying in coach. Please arrange to remove these bags so that maintenance of the coach could be done. The DD was entrusted to SI Satender Kumar who reached near washing line No.22 and found four gunny bags written 'Kishan Urea' in coach No.11278A lying in the gallery near latrine. These were tied with jute rope/rassi. On opening the said gunny bags carton box, black punnies

and bag SSC were found in which different parts of human body were found. In one bag human internal parts and intestine, in second bag two hands and feet along with leg, in third bag the part of human body above legs and below stomach was found, penis and testicles were found cut. In third bag human head with upper part of stomach was found. Injuries were found on the face and neck of that persons. The said man was aged around 35-40 years of age. On finding this dead body in the gunny bags, Satender Kumar prepared rukka on the basis of which the present case was registered. Crime team and photographer were summoned at the spot and Sr. officers were informed and investigation was carried out by Insp. B.S. Ahlawat. Identity of dead body could not be established. So, pamphlets of the dead body was prepared and gazette notification was published. Thereafter, SI Satender and Insp. B.S. Ahlawat went to Meerut, U.P. and found one missing report lodged in PS Kandla matching the description of deceased. Accordingly, dead body was got identified as of Giani Ram by son of deceased and his brother Nanak Chand and they suspected Jameel Ahmed Abassi in the murder of Giani Ram. So, police party reached at the house of Jameel Ahmed Abassi and arrested him as well as recovered articles from his residence which were matching the packing of gunny bags. Thereafter, other accused persons were also arrested and after completion of the investigation, challan was filed."

**3.** The prosecution in order to substantiate the case examined as many as 26 witnesses. Of these, PW-2, Dr. K.L. Sharma, conducted the postmortem on the dead body on 7.3.2001. PW-3, Ram Asrey, deposed that on 2.3.2001, three or four gunny bags were found in Agra Passenger Train 362 Down in coach No.11278 which were taken into possession vide memo Exhibit PW 3/A. PW-4, Khalid, deposes that he knew one person by the name of doctor but does not know his real name. He pointed out Jameel Ahmed.

The witness was declared hostile and did not support the prosecution's case. PW-5, Constable Ashok Kumar, is the photographer who took photographs and exhibited the photographs and negatives as Exhibit PW 5/A-1 to A-11 and print photos Exhibit PW 5/B-1 to B-11. PW-6, Head Constable Sudarshan Lal, deposes that on 2.3.2001, Delhi police officials went to Police Station Baraut, U.P. and distributed posters and pamphlets of an unknown and unclaimed body. He also pasted one on notice board of the Police Station. According to him, on 3.3.2001, one Dinesh Kumar came to the Police Station to enquire about an unknown person's accident and was told that no accident had taken place. Dinesh Kumar identified the body in the poster as that of Giani Bhai. Dr. Jameel was also along with Dinesh who confirmed the photograph to be that of Giani Ram.

**4.** PW-7, Fajlu Rehman, has deposed that he was a rickshaw puller and that about one and a half year ago, he had taken a passenger in rickshaw to Kandla city from bus stand. The police met him at the bus stand and made enquiries about his name. He stayed along with police for about 5-10 minutes. He too does not support the prosecution's case. PW-8, Dinesh Kumar, who deposes that on 27.2.2001, Jameel had telephoned his father Giani Ram to reach Kandla Village, District Muzzafar Nagar. Jameel had established an ice factory and required his father, Giani Ram, to bring one lac of rupees along with him. The witness deposes that his father left for

Kandla, however, he did not call back on that day nor the following day. On 1.3.2001, his uncle (Tau), Nanak Chand, left for Kandla and came back to Delhi on the morning of 2.3.2001. On the evening of 2.3.2001, he along with his friends Hari Om, Ashok Kumar and Rajender left for Kandla. He made enquiries from Jameel who told him that his father had left in the morning of 28.2.2001. In the morning of 3.3.2001, he took Jameel with him to Police Station Kandla. The witness gave a complaint in writing about the missing of Giani Ram. He saw some poster at Police Station Baraut and told Jameel that the said photo appears to be that of his father. They went to Police Station Loni where he came to know that a dead body had been recovered at Railway Delhi Main. He goes on to say that he along with Jameel then came to Village Rithala. On 11.3.2001, Inspector came to his house and showed him some photographs. Nanak Chand, his uncle, was also there. The witness along with Nanak Chand then went to mortuary Subzi Mandi where he identified the dead body of his father. His statement was recorded Exhibit PW 8/A and he received the dead body vide memo Exhibit PW 8/B. On 27.3.2001, he along with Jameel and Dilshad went to Kandla. Some links of the strap of the wrist watch were recovered from near the drain in the heap of kura. The links got identified as belonging to his father. In cross-examination, he states that his father used to do the work of welding and from that business only their household expenses were met. He also states that accused Jameel had been visiting their house and his wife also came

once, however, families of Jameel and the deceased were having friendly relations for the last six years. He states that he had identified the pieces of chain as he had seen his father wearing the same. There is no specific mark on the chain. At the time of recovery, he was not present but pieces of chain were shown to him later on. It was in crushed condition.

**5.** PW-11, Jaidev, deposes that on 13/14.3.2001, he joined investigation. He along with Jameel, Dilshad and police officials went to Baraut Kotwali. From there, the accused led them to Village Kandla. The accused persons pointed out the place inside the house where they had kept the dead body of the deceased Giani Ram and also got recovered a saw which was seized vide memo Exhibit PW 11/A. The accused thereafter led them to the cremation ground from where they recovered pieces of blade and a piece of chain of wrist watch. The pieces of blade of saw, shoes, socks and shirt were taken into possession vide memo Exhibit PW 11/B. On 27.3.2001, accused Jameel and Dilshad got recovered pieces of chain of the wrist watch which were taken into possession vide memo Exhibit PW 11/C. Another seven pieces of blade of saw were recovered which are collectively exhibited as Exhibit P-3. One pair of shoes, socks and one piece looking like shirt belonging to Giani Ram were sealed in a parcel with a seal of BSA. In cross-examination, the witness deposes that he was asked to join investigation by the wife and brother of deceased and became witness as

they were unwell. No police official asked him to join investigation. It was the son of Giani Ram, namely, Dinesh Kumar, who had identified the pieces of wrist watch chain as belonging to his father. He did not tell any special mark. Police did not look for any special identification mark on the piece of chain. Police did not put any special mark of identification on the saw.

**6.** PW-14, ASI Vijay, deposed to the arrest of Fazludeen and Ahsan from Village Kandla as also recording of their disclosure statements Exhibit PW 14/A and 14/B. In cross-examination, he states that he does not recollect if any person from the locality was informed about the accused being brought to railway station Sarai Rohilla at Delhi. They were formally arrested at Delhi. PW-15, Ramji Dass, states that he runs a STD booth at Kandla, District Muzzafar Nagar with the name and style Sonu STD Booth. One Jameel used to come to his booth to make telephone calls. Due to poor eye sight, he was unable to identify Jameel in the court. He produced register Exhibit PX which was seized vide memo Exhibit PW 15/A.

**7.** PW-16, Nanak Chand, deposes that he knew Jameel and his family members. Jameel was a Tantrik and had hypnotized his entire family. Jameel had sold medicines to him including Tabeez. He goes on to depose that accused Jameel had been visiting his house for the last 7-8 years and that Giani Ram was his younger brother. On 25.2.2001 at about 12:45 p.m.,

a telephone call was received at his house from Jameel. Jameel told him that accused wanted to setup an ice factory and he should send Giani Ram with one lac of rupees. The witness told him to talk directly to Giani Ram. On 27.2.2001, Giani Ram left the house at 4 p.m. for going to Kandla. Giani Ram, whenever he used to go to Kandla, he used to call at Delhi after reaching there, however, no telephone call was received on Wednesday and Thursday. Thereafter, at about 8:15 p.m., he reached the house of accused Jameel on 1.3.2001 and made enquiries. He was told that Giani Ram had left for Delhi on that very day. He made enquiries but could not trace Giani Ram. The witness came back on Friday to Delhi and told his family members that Giani Ram did not meet him at Kandla upon which Dinesh left for Kandla. This information was given to Jameel Ahmed. The witness asked Dinesh to lodge a report which was not recorded. He then gave a complaint in writing at Police Station Kandla. He asked Dinesh to make enquiries from the police stations following between Kandla and Delhi. On 6.3.2001, he along with 20 persons went to Kandla for the Eid function at the house of Jameel. On that day also a complaint in writing was made at Police Station Kandla. Jameel Ahmed accompanied them in search of Giani Ram at Village Kandla. On 11.3.2001, a telephone call was received from Police Station Kandla informing him that pieces of dead body were recovered at Railway Main Delhi. He accordingly went to Railway Main Delhi and then to Subzi Mandi mortuary and identified the dead body of Giani Ram vide statement

Exhibit PW 16/B. He received the dead body vide memo Exhibit PW 8/B. In cross-examination, he states that for the last 7-8 years, Jameel Ahmed used to send medicines to his family.

**8.** PW-17, Ajay Kumar, states that he runs a hardware shop in front of his house in the name of M/s. Ajay Kumar. On 14.3.2001, some police officials of Delhi police along with two persons, out of which one person is Jameel Ahmed, present in court, was with the police officials. He cannot identify the other person who accompanied the police party. The accused pointed out towards his shop that they had purchased saw and its blade from his shop. The police prepared a pointing out memo Exhibit PW 17/A. He could identify the said saw if shown to him. The witness identified the saw and the blade as purchased from his shop. In cross-examination, he states that he has no proof of the ownership of the shop as well as him running the hardware business. However, he states that he is a retailer of hardware products. He had to purchase the same from the local market in Shyamli. He admits that there are many shops of hardware who sold the same saw and blades. The other shopkeepers have also purchased hardware goods from where he purchased. He identified the saw only because the accused pointed out at his shop in the presence of police.

**9.** PW-18, Suresh Chand, deposes that he runs a shop selling pannis, ropes, bamboos, etc. On 28.3.2001, some police officials along with two persons came to his shop. He could not identify the two persons in court. Both persons pointed out towards his shop and told the police that they had purchased a black panni and a rope from his shop. He had told the police personal that he cannot say that the two persons purchased pannis from his shop because many customers used to come daily. The police prepared a pointing out memo Exhibit PW 18/A. The witness was sought to be cross-examined by the learned Additional Public Prosecutor but does not support his earlier statement. In cross-examination, the witness states that he was running a shop for over 7-8 years but did not have any proof of running such a shop nor could he produce the same. He purchased pannis from Muzzafar Nagar. Other shopkeepers also used to purchase the pannis from Muzzafar Nagar and the same were sold in Shyamli. There were no specific marks to identify any panni.

**10.** PW-19, SI Raj Kumar Tyagi, states that on 6.3.2001, he was posted at Police Station Kandla. He was responsible for beating of the drums in order to give publicity to the poster. Jameel Ahmed disclosed to him that the deceased had come to their house on the night of 27.2.2001 and had gone back in the morning of 28.2.2001. In cross-examination, the witness

states that he had neither recorded F.I.R. nor made case diary but made interrogations orally.

**11.** PW-22, Constable Dharampal Singh, states that on 6.3.2001, a 'Missing Person's Report' was lodged at 4.40 p.m. by Nanak Chand and Deep Chand, residents of Delhi. PW-23, Neeraj Goel, states that he is running a fertilizer shop in the name of 'M/s Goel Trading Company'. On 28.2.2001, he arranged a bhandara in Mata Mandir at Kandla (U.P.). Jameel came to his shop to purchase four plastic bags in which he had kept urea. He sold him the bags for Rs. 32/- and can identify the bags. He has identified the bags as Ex.PX-1 to EX-4. In cross-examination, he admits that the seals on some of the the pullandas were not visible. He also admits that he had brought no proof to show that he is running a urea shop at Uttar Pradesh. However, he purchased the urea from Gopal Trading Company, Muzzafar Nagar. He does not have any proof of dealership for purchasing the same. He volunteered that there is only one urea shop in the entire area in Kandla. He goes on to state that he used to sell urea bags to whoever purchased the same. He admits that prior to his selling the bags to Dr. Jameel, he had sold a number of them to other customers also. He could not give the details. He admits that such like bags are obtained from even other shops. He admits that there is no specific mark on the bags shown as having been purchased from his shop.

**12.** PW-24, SI Satinder Kumar, is the Investigating Officer who deposes as to the steps taken during investigation, various recoveries made and exhibiting them. PW-25, Anil Kumar, states that on 14.3.2001, he had a shop which sold sports items at Shyamli. On that day, he saw many police officials standing in front of his shop. He was asked whether he is the owner of the shop. At that time, two more persons, Dr. Jameel and Dilshad, who are present in court, were with the Police party. The Police inquired of him if he had sold any SSC bags of sports to the accused persons. The witness replied that he cannot say whether the SSC bags were purchased by the accused persons from his shop. This witness was not cross-examined by the APP.

**13.** Dilshad, in his statement under Section 313 Cr.P.C, denies the incriminating material put to him and pleads that he has been falsely implicated. Similarly, Jameel in his statement under Section 313 Cr.P.C. denies the incriminating material put to him and claims that he is innocent and has been falsely implicated.

**14.** The Additional Sessions Judge, upon an overall analysis of the testimony of the PWs, returned a finding that the last seen evidence is absent. However, he returned a finding that Dr. Jameel had made telephone call to the house of the deceased at Delhi on 25.2.2001 which was attended

to by Nanak Chand, PW-16, and further corroborated by PW-8, Dinesh Kumar, who deposes that his father left for Kandla on instructions from Jameel to see the ice factory and to bring rupees one lac. The Court also returned a finding that there is nothing on record to establish that rupees one lac was taken by the deceased to Kandla on the day so alleged.

**15.** Relying upon the testimonies of PW-17, Ajay Kumar, PW-18, Suresh Chand, PW-23 Neeraj Goel and PW-25, Anil Kumar, according to the learned Judge, the Prosecution has proved that the accused pointed out the shops from where they purchased the saw and its blades vide Memo Ex. 7/A and 7/B. Similarly, the pannis from the shop of PW-18, Suresh Chand, were pointed out vide Memo Ex. 18/A and the plastic bags from the shop of Neeraj Goel, PW-23, vide pointing Memo Ex.23/A. The Court held that it was of the opinion that the Prosecution had proved that Dr. Jameel had purchased the said bags from the shop of PW-23, Neeraj Goel, with intention to pack the dead body of the deceased in these bags. So, the Prosecution has proved the pointing out Memo Ex. PW-23/A. It also held that the Prosecution has proved the pointing out Memo Ex. PW-25/A regarding the purchase of SSC bags from sports shop though the shopkeeper cannot recollect whether the accused had purchased them from him. The Prosecution has also proved the recovery of the unclaimed gunny bags as also the copy of the F.I.R. and the DD No. 3A, besides the fact that the deceased had come to the house of

Jameel Ahmad on the night of 27.2.2001 and did not return to his residence thereafter. The Court has also used the disclosure statements of Jameel and Dilshad to prove the motive and recoveries of pieces of chains, saw blades and the saw etc. It has also used the disclosure statement to buttress its judgment regarding the common intention to commit murder of Gianni Ram and thereafter, although acquitting the appellants of the charge of 120-B/201/34 IPC.

**16.** The learned Public Prosecutor, Ms. Richa Kapoor, has very fairly and with great deal of professionalism, taken us through the record of this case since nobody appeared to assist this Court on behalf of the appellants. On an analysis of the material placed before us, we find that the case of the Prosecution revolves around the telephone call received by the deceased from Dr. Jameel to come and assist him in setting up an ice factory at Kandla and to bring rupees one lac. The deceased is stated to have reached Kandla on 27.2.2001 and not returned home thereafter. Coupled with this is the so-called pointing out memos by the accused showing the place from where certain packing material was purchased in which the body of Giani Ram was recovered by the Police at the Railway Station Delhi. The above, together with the recovery of a hacksaw and broken pieces of blades, is the mainstay of the Prosecution's case.

**17.** The trial court itself has come to the conclusion that there is no positive evidence on record regarding the last seen, yet has gone on to rely upon the telephone call made by Dr. Jameel pursuant to which the deceased came to Kandla. The circumstance that Dr. Jameel invited the deceased to Kandla to help Dr. Jameel in setting up his ice factory, even if proved, by itself is not sufficient to hold the appellants guilty for the offence under Section 302/34 IPC. The question, therefore, that needs attention is whether the pointing out of shops selling the packing material would in itself be sufficient to show that the packing material was, in fact, purchased and the dead body disposed of in the packing material so purchased.

**18.** In the testimony of PW-17, Ajay Kumar, we find that he had a hardware shop and that on 14.3.2001, some Policemen along with two persons came to his shop. The witness identifies Dr. Jameel as one of the persons with the Police party. He deposes that a pointing out Memo, Ex. PW-17/A, was prepared and that he identified the aaree/saw handle, Ex. P-1, on account of the pointing out in presence of the Police party. He admits that the saw is easily available in many other shops and that he along with the other shop owners makes purchases of hardware from Shyamli itself and that there are many shops selling such like saws and blades. He cannot identify that it was Jameel or Dilshad who had purchased this saw and the blade from his shop. His testimony is only general in nature and based on

his shop being identified by the accused persons. Similarly, PW-18, Suresh Chand, runs a shop selling pannis, ropes and bamboos. He deposes to the fact that on 28.3.2001 personnel from Delhi Police along with two persons came to his shop. He cannot identify the two persons who were along with the Police party. Both persons pointed out to his shop but he cannot say that these were the persons who purchased the pannis from his shop. He also admits that such like pannis are available at many shops which he, along with other shopkeepers, purchases from Muzzafar Nagar and sells in Shyamli. There was no specific mark of identification on any of the pannis.

**19.** PW-23, Neeraj Goel, runs a fertilizer shop. Jameel purchased four plastic bags from him on 28.2.2001. He admits that he had sold a large number of bags to a large number of customers prior to the bags being sold to Dr. Jameel and could give no details of the number of bags sold. He also admits that such like bags can be obtained from other shops in the area as well and that there is no specific mark on the bags to show that they were purchased from his shop. He denies the suggestion that Dr. Jameel is the President of Yuva Congress and that he is a BJP worker. Similarly, PW-25, Anil Kumar, sells sport items in Shyamli. He, on 14.3.2001, saw a large number of police officials standing in front of his shop and that two persons, Dr. Jameel and Dilshad, were along with the Police Party. He categorically told the Police party that he cannot say whether the SSC bags were

purchased by these two persons from his shop. This witness was not cross-examined by the APP.

**20.** Going through the statements of the above witnesses it is evident that no one says that any of the articles recovered by the Police as packing material were purchased by the accused persons from their shops. There is only a general statement which can possibly lead to an inference regarding the probability of the purchase by the accused from the shops. This cannot and does not amount to proof of the fact that the packing material, relied upon by the Prosecution, was purchased by the accused persons from the shop of the above witnesses. The matter remains in the realm of speculation and probability but does not amount to a proven fact.

**21.** Coming to the recoveries of the hacksaw at the instance of the accused persons and the pieces of blade as also links of a watch strap, which were never subjected to test identification as is required by law of such objects, there is no evidence to show that the hacksaw recovered from the house of Dr. Jameel was ever fitted with the pieces of metallic saw recovered from the cremation grounds or garbage heap. The recoveries of these articles have been made many days after their alleged use from an open place accessible to each and every one and cannot be termed as being 'places within the special knowledge of only the accused persons'.

Furthermore, strangely enough, there is no evidence on record to show which of the accused made which disclosure statement, at what point of time and thereafter at whose instance were any recoveries made. The material on record suggests that both the accused made statements simultaneously and got recoveries effected simultaneously at simultaneous pointing outs. This is hardly worthy of credence and, surely, not an appropriate manner of foisting recoveries on accused persons. This cryptic and shoddy method, to say the least, is not acceptable and cannot be made the basis of a conviction. Last but not the least, is the so-called motive. There is no admissible evidence on record to show that the deceased was having an illicit relation with the wife of Dr. Jameel. The trial Court, with great respect, has allowed itself the liberty of using inadmissible evidence, namely, the so-called disclosure statement to make out the motive as an illicit relationship and used the same to connect the accused persons. The statement of the accused in Police custody cannot be used to fill in gaps and lacunae of the Prosecution and, in its entirety, is not saved by Section 27 of the Indian Evidence Act. As regards the recovery of shoes, burnt shirt etc. of the deceased at the instance of the accused persons, is not supported by the son of the deceased who was the only witness who could have seen the dress of his father when he left for Kandla. Even otherwise, this circumstance is not put to the accused in his statement under Section 313 Cr.P.C.

**22.** At this stage, we must also point out that the incriminating circumstances put to the accused must be clear and unambiguous so as to enable the accused to answer the same without any confusion being caused. In the present case, the material put to under Section 313 Cr.P.C. to the accused persons is vague, inaccurate and, to say the least, depict total lack of application of mind. As a matter of fact, examination of the accused under Section 313 Cr.P.C. is doing violence to justice and is indicative of a cryptic approach to evaluation of evidence. In the present case, the accused have been acquitted of the offence under Section 120B/201/34 IPC and there is nothing on record to show that any of the accused persons share a common intention or had any motive or desire or plan to do away with the deceased, whom Dr. Jameel is stated to have been friendly with, for over eight years. We fail to appreciate how the trial court could arrive at the conclusion that both the appellants are guilty of offence under Section 302 IPC with the aid of Section 34 IPC. There is no discussion in the judgment which may justify such a finding nor any material to support it. Merely because a needle of suspicion may point to the appellants, cannot justify a conviction under Section 302/34 IPC.

**23.** In view of the findings above, the judgment under appeal cannot be sustained. We, therefore, set aside the judgment of conviction dated 19.05.2006 and order on sentence dated 25.05.2006. We allow Criminal

Appeal No.205 of 2007 and answer Death Sentence Reference No.2 of 2006 accordingly. The appellants are acquitted of all charges framed against them. The appellants, who are in custody, shall be set at liberty forthwith unless required in any other case.

**[R.S. SODHI]**
**JUDGE**

**[H.R. MALHOTRA]**
**JUDGE**

**APRIL 24, 2007**
**'AA'/jt**